

***United States Court of Appeals  
for the Second Circuit***



**PETITIONER'S  
BRIEF**



75-4261

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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ANTOINE THUREL,

Petitioner,

- v -

IMMIGRATION AND NATURALIZATION  
SERVICE,

Respondent.

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Docket No. 75-4261

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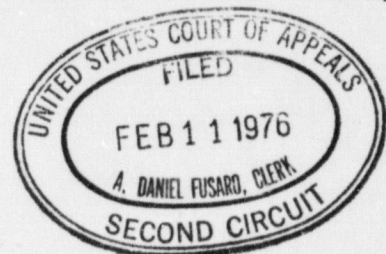
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PETITIONER'S BRIEF

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FEBRUARY, 1976



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STATEMENT OF THE ISSUE

Whether the Board of Immigration Appeals properly applied to the facts of the case at bar the standards governing the withholding of deportation pursuant to Sec.243(h), as amended, of the Immigration and Nationality Act of 1952, 79 Stat. 918.

STATEMENT OF THE CASE

Petitioner Antoine Thurel is an alien, a native and citizen of Haiti. He entered the United States on August 2, 1970 as a nonimmigrant visitor for pleasure, and was authorized to stay until August 24, 1970. He remained beyond that date and conceded his deportability at a deportation hearing (R. 9a)

Petitioner applied for withholding of deportation pursuant to Section 243(h) of the Immigration and Nationality Act out of fear of political persecution as result of his anti-Duvalier views, and of his political activities against the Haitian regime while petitioner was in Haiti. The Immigration Judge denied petitioner's request for withholding of deportation, finding that petitioner had failed to establish that he would be persecuted on account of his political beliefs. (R. 5a) On administrative appeal, the Board of Immigration Appeals affirmed the decision of the Immigration Judge (R. 1a-3a). This petition for review followed.



## ARGUMENT

### POINT I. Present conditions in Haiti.

The National Geographic of January 1, 1976 (Vol. 149, No. 1) has this to say about present conditions in Haiti; (The National Geographic is one of America's most respected publications, with a circulation reaching 7,000,000 copies).

" We were alone, " my informant said in a whisper. "Cut off from the rest of the world in the middle of the 20th century. Never knowing when the police would strike. That was life under Papa Doc."

It was night and we sat out of doors, apart from the others, apart from the music and the lights. I could not see the expression of his black face, but I knew it was watchful. I had learned that it was still risky to speak honestly about Francois Duvalier, even though he had been dead for three years.

A soft-spoken physician who had studied in the United States, Duvalier had come to power by legitimately winning an election as President by an overwhelming majority in 1957. His aims: to shift power from a mulatto minority to a black majority and to improve self-sufficiency. But in consolidating his power he is alleged to have resorted to abduction, imprisonment, torture, even murder.

Duvalier's brutal tontons macoute -"bogeymen"- in their blue serge suits, open-necked shirts, dark glasses, and side arms terrorized Duvalier supporters as well as opponents, since his policy was to trust no one.

During most of the Duvalier years, the late 1950's through the 1960's, Haiti had virtually no economic growth. One source of help, U. S. aid, was reduced for several years in protest against Duvalier's policies.

My nighttime confidant had once been a friend and supporter of the President-for life, and he told me these things sadly.

"Worst of all," he concluded, "the regime made fear a pervading part of Haitian life."

That stranglehold of fear during Papa Doc's day was powerfully strengthened by the President's uncanny resemblance - perhaps cultivated- to popular renderings of Baron Samedi, the awesome keeper of the tombs in the folk religion, voodoo (Emphasis supplied).

This is not quite what the Immigration Judge found, not on the record but on the basis of conjecture. Obviously the conditions of life in Haiti did not develop overnight, they are the result of years of oppression by a ruthless dictatorship. In August, 1974 Thurel testified before the Immigration Judge (R. that he feared for his life. Now, in January, 1976, the National Geographic states: at 77

"Worst of all," he concluded, "the regime made fear a pervading part of Haitian life".

Thurel did not play with words when he testified. He feared being subject to the same punishment and treatment as that meted out to the supporters of Fignole:



imprisonment without charges being preferred, without a trial and without conviction, police surveillance without any reason whatsoever.

POINT II. The "findings" of the Immigration Judge are not supported by substantial evidence.

Section 106(a)(4) of the Act provides, in pertinent part:

"the Attorney General's finding of fact if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive".

Here the Attorney General has delegated his functions to make findings of fact to the Immigration Judge who, in turn, has not made the effort to comply with the statutory standard. Apparently, in this deportation proceeding where the burden of proof is upon the Government, there has been no proof of the actual conditions of life in Haiti, as described by the National Geographic.

The order of the Board of Immigration Appeals which affirmed the order of the Immigration Judge should be vacated and the cause remanded to the Immigration Judge for a hearing as to the actual conditions of life

in Haiti, cf. I.N.S. v. Stanisic, 395 U.S. 62, at 79, 80. Sovich v. Esperdy, 319 F. 2d 21 (2nd Circ., 1963) Kovac v. I.N.S., 407 F. 2d 102 (9th Circ., 1969). In such a proceeding, Thurel should be permitted to introduce into evidence the National Geographic account of life in Haiti and, if need be, to call as eye witnesses the writers of that article.

POINT III. There is no evidentiary value in the State Department letter of July 18, 1974

Despite the decisions in Kasravi v. I.N.S., 400 F. 2d 675 (9th Circ., 1968) and Khalil v. I.N.S., 452 F. 2d 1276 (9th Circ., 1972), the I.N.S. has relied on the State Department answer (R.24a) to its inquiry in denying Thurel his claim under 243(h), (R. 7a) and in resisting his 243(h) application (R. 21a) which he made to the Immigration Judge.

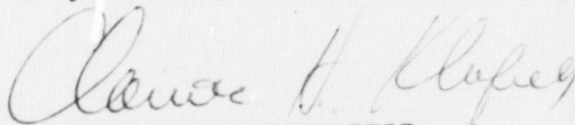
While it is true that neither the Immigration Judge nor the Board of Immigration Appeals expressly, relied on such "evidence", the State Department's letter is still a part of the record. The letter should be stricken, Kasravi, Khalil, supra.



CONCLUSION

For the foregoing reasons, the Order of the Board of Immigration Appeals, affirming the decision of the Immigration Judge on Thurel's 243(h) application should be vacated and the cause remanded for further proceedings before the Immigration Judge.

Respectfully submitted,



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February, 1976

STATUTES CITED AND INVOLVED

Immigration and Nationality Act of 1952 as amended

Section 106 (a) :

Determination upon administrative record

"\*\*\* (4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive."

Section 241 - Deportable aliens - General classes

- (a) Any alien in the United States ( including an alien crewmen ) shall, upon the order of the Attorney General, be deported who \*\*\*\*\*
- (2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States.

Section 243 (h) - Withholding of deportation

- (h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason.



